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Amendatory Contract
No. 8-07-20-X0354

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3 UNITED STATES
4 DEPARTMENT OF THE INTERIOR
5 BUREAU OF RECLAMATION
6 Central Valley Project, California

7 AMENDMENT TO AGREEMENT TO TRANSFER THE
8 OPERATION, MAINTENANCE, AND REPLACEMENT AND
9 CERTAIN FINANCIAL AND ADMINISTRATIVE ACTIVITIES
10 RELATED TO THE SAN LUIS AND DELTA-MENDOTA CANALS,
11 TRACY PUMPING AND O'NEILL PUMPING/GENERATING PLANT,
12 SAN LUIS DRAIN AND ASSOCIATED WORKS

13 PREAMBLE

14 THIS AMENDMENT TO AGREEMENT TO TRANSFER THE OPERATION,
15 MAINTENANCE, AND REPLACEMENT AND CERTAIN FINANCIAL AND
16 ADMINISTRATIVE ACTIVITIES RELATED TO THE SAN LUIS AND DELTA-MENDOTA
17 CANALS, TRACY PUMPING AND O'NEILL PUMPING/GENERATING PLANT, SAN
18 LUIS DRAIN AND ASSOCIATED WORKS, (hereinafter referred to as "Amendment"),
19 effective the 16th day of February, 2003, entered into in pursuance
20 generally of the Act of Congress of June 17, 1902 (32 Stat. 388), and the acts amendatory thereof
21 or supplementary thereto, including Section 5 of the Act of August 13, 1914 (38 Stat. 687),
22 all collectively hereinafter referred to as the Federal Reclamation laws, between the
23 UNITED STATES OF AMERICA, hereinafter referred to as the United States, and the

24 SAN LUIS AND DELTA-MENDOTA WATER AUTHORITY, hereinafter referred to as the
25 Authority, a public agency of the State of California, duly organized, existing, and acting
26 pursuant to the laws of the State of California,

27 WITNESSTH, That:

28 EXPLANATORY RECITALS

29 WHEREAS, the United States and the Authority entered into that certain
30 Agreement to Transfer the Operation, Maintenance, and Replacement and Certain Financial and
31 Administrative Activities Related to the San Luis and Delta-Mendota Canals, Tracy Pumping
32 and O'Neill Pumping/Generating Plant, San Luis Drain and Associated Works, Contract
33 No. 8-07-20-X0354 (Transfer Agreement), effective March 1, 1998; and

34 WHEREAS, the parties desire to amend the Transfer Agreement in order to
35 modify certain administrative and financial provisions thereof.

36 NOW THEREFORE, in consideration of the covenants herein contained, it is
37 hereby mutually agreed that the Transfer Agreement is amended, as follows:

38 1. Article 11 of the Transfer Agreement is deleted in its entirety and replaced
39 with the following:

40 COST RECOVERY FOR AUTHORITY OPERATION, MAINTENANCE, AND
41 REPLACEMENT (OM&R)ACTIVITIES; TERMINATION OF WATER DELIVERIES

42 11. As of the effective date of this Agreement, the Authority shall be responsible for
43 directly funding the OM&R of the Project Works transferred hereby. Except as otherwise
44 provided herein, the parties acknowledge that the United States will no longer provide funding
45 through the appropriations process for such OM&R. The United States hereby delegates to the

46 Authority all required authority under statutes, contracts, regulations, and policies to collect for
47 OM&R of the Project Works. The procedures and authorities to be utilized by the Authority for
48 such direct funding are set forth in this Article 11.

49 (a) OM&R Budgets. Not later than ninety (90) days before the start of each
50 Fiscal Year, the Authority shall submit to each Water Delivery Contractor, and all Parties
51 Entitled to Utilize or Receive Other Water, proposed budgets for each of the next two (2)
52 succeeding Fiscal Years for all activities of the Authority to be carried out under this Agreement.
53 The budgets so developed shall include amounts necessary to establish the reserve fund
54 described in Article 13 hereof and such other reserves as may be determined to be necessary by
55 the Authority from time to time. The Authority shall afford each Water Delivery Contractor and
56 all Parties Entitled to Utilize or Receive Other Water the opportunity to submit comments on
57 such proposed budgets by sixty (60) days before commencement of the Fiscal Year. Except as
58 otherwise provided in the Memorandum of Understanding described in Article 11(f) hereof, any
59 dispute(s) regarding the proposed budgets shall be resolved in the manner described in Article 9
60 hereof. The Authority shall submit the final budget for each Fiscal Year to the Contracting
61 Officer prior to the start of that Fiscal Year. The Authority shall use reasonable efforts to
62 perform its responsibilities under this Agreement in accordance with the applicable final budget.

63 (b) Cost Recovery Methodology. The Authority shall develop a methodology
64 to recover all costs incurred by the Authority in carrying out its responsibilities under this
65 Agreement, including without limitation all costs described in the budgets prepared pursuant to
66 Article 11(a) hereof.

67 (1) The Authority's cost recovery methodology shall (i) provide for the
68 equitable allocation of the costs to be recovered among Water Delivery Contractors with an
69 obligation to pay for water delivered or conveyed through the Project Works and all Parties
70 Entitled to Utilize or Receive Other Water with an obligation to pay therefor, including without
71 limitation the United States; (ii) provide for the equitable allocation of the costs to be paid to the
72 San Luis and Delta-Mendota Water Authority pursuant to the Memorandum of Understanding
73 described in Article 11(I) hereof; and (iii) clearly set forth the manner in which all such costs
74 shall be collected by the Authority, including deadlines for payments and/or deposits required of
75 Water Delivery Contractors and all Parties Entitled to Utilize or Receive Other Water under the
76 methodology.

77 (2) Such methodology shall recover costs in lieu of the conveyance
78 operation and maintenance cost component, the conveyance pumping operation and maintenance
79 cost component and the San Luis Drain operation and maintenance cost component heretofore
80 calculated by the United States pursuant to its ratesetting policies for the Project. In addition to
81 OM&R costs for directly funding the OM&R of the Project Works, such methodology shall
82 recover (i) power costs for conveyance pumping incurred by the United States for the production
83 or transmission of such power; and (ii) amounts due from the United States to the State of
84 California, Department of Water Resources (hereinafter referred to as "DWR"), for the Federal
85 share of facilities designated "joint use facilities" and "Federal-only facilities" pursuant to that
86 certain agreement dated December 30, 1961, and Supplement No. 1 to said Agreement, dated
87 May 26, 1971, between the United States and the State of California relating to the San Luis Unit
88 (Contract No. 14-06-200-9755), as amended, that are payable by the Water Delivery Contractors,

89 Parties Entitled to Utilize or Receive Other Water, and contractors in the Friant Division
90 pursuant to the Memorandum of Understanding described in Article 11(f) hereof, in connection
91 with the delivery or conveyance of water through the Project Works.

92 (3) The Authority's cost recovery methodology, and any subsequent
93 amendments thereto, shall be approved by the Authority and provided to all parties with payment
94 obligations under this Article 11 by December 1 of each year, or not less than sixty (60) days
95 prior to the effective date of any amendment thereof. Except as otherwise specified in the
96 Memorandum of Understanding described in Article 11(f) hereof, any dispute(s) regarding the
97 Authority's cost recovery methodology shall be resolved in the manner described in Article 9
98 hereof. The Contracting Officer has approved the Authority's initial cost recovery methodology.
99 All proposed amendments shall be submitted to the Contracting Officer for review and comment
100 concurrent with the dissemination to all parties with payment obligations noted above.

101 (c) Deficiencies in Cost Recovery. The Authority is not obligated to provide
102 funding from non-Federal sources for the cost of delivering water to parties who do not pay the
103 Authority in full for OM&R of Project Facilities.

104 (1) In the event any Water Delivery Contract or obligation to deliver
105 Other Water provides for or results in the payment of less than all of the costs to be recovered by
106 the Authority in accordance with Article 11(b) hereof (a "deficiency"), whether resulting from
107 the inadequacy of contract provisions between the Water Delivery Contractor or Party Entitled to
108 Utilize or Receive Other Water and the United States to cover the Authority's OM&R costs,
109 delinquency in payment of amounts due as described in Article 11(d), or otherwise, the
110 United States shall pay to the Authority the amount of any such deficiency.

111 (2) Except as otherwise provided under this Article 11(c), payment for
112 such deficiencies shall be made through a separate service contract or such other appropriate
113 legal instrument as may be entered into by the parties from time to time, by the terms of which
114 the United States agrees to pay or provide funding to the Authority for water delivery services
115 provided under this Agreement to the United States on behalf of the parties incurring the
116 deficiencies. The solicitation and award of any service contract shall be made pursuant to the
117 applicable Federal acquisitions laws, regulations, and policies governing such contracts,
118 including the Federal Acquisition Regulations (FAR), and the Department of the Interior and
119 Bureau of Reclamation Acquisition Regulations. Payments made by the United States to the
120 Authority for such deficiencies shall become the financial obligation of the deficient party to the
121 Contracting Officer.

122 (3) If payments for deficiencies as provided in this Article 11(c) are
123 not timely made by the United States in accordance with said service contract or other
124 appropriate legal instrument, the Authority may exercise its rights under Article 11(d).

125 (d) Termination of Water Deliveries. Subject to subparagraphs (1)-(3) of this
126 Article 11(d), in the event any amount due to or to be collected by the Authority from a Water
127 Delivery Contractor or any other party pursuant to Article 11 hereof is not paid when due
128 (a "delinquency"), the Authority is authorized by the United States to discontinue delivery and
129 conveyance of water to or for such Water Delivery Contractor or other party until such time as
130 the delinquency is cured.

131 (1) The Authority shall give the Contracting Officer and the delinquent
132 party written notice of the delinquency and of the date deliveries will be terminated if the
133 delinquency is not cured. The Contracting Officer and the Authority shall agree in writing, from
134 time to time, on the appropriate timing and length of such notice period.

135 (2) In the event, and only in the event, the Contracting Officer directs
136 the Authority in writing to deliver or convey water to or for a delinquent party, the United States
137 shall be liable to the Authority for the costs to be recovered from such party under Article 11(c)
138 of this Agreement, and the Authority shall have no obligation to collect any amounts associated
139 with such water from the delinquent parties.

140 (3) For purposes of this Article 11(d), in the event the Friant Water
141 Users Authority is unable to collect and remit to the Authority amounts to be paid by the Friant
142 Division Contractors pursuant to the Memorandum of Understanding described in Article 11(f)
143 hereof, following the notice described in Article 11(d)(1) hereof, the Contracting Officer shall be
144 deemed to have directed the Authority to deliver or convey Settlement Water despite a
145 delinquency, and the United States shall be liable to the Authority for the costs to be recovered
146 on account of such Settlement Water under this Agreement. The United States shall pay the
147 costs associated with any such water on the same terms and conditions as would otherwise apply
148 to the applicable Water Delivery Contractor or other party. Such costs shall be reimbursed to the
149 Authority as set forth in Article 11(c).

150 (e) Interest. In the event any amounts due to the Authority from the
151 United States under this Agreement are not paid when due, in addition to exercising the rights
152 afforded the Authority under Article 11(c) and Article 11(d) hereof, the Authority will receive

153 interest on the delinquent amounts pursuant to the Prompt Payment Act, as amended
154 (31 USC 3901, et seq.); Provided, the Authority shall have previously submitted appropriate
155 invoices to the United States in accordance with 48 CFR Section 32.907-1.

156 (f) Recovery of Certain Costs and Memorandum of Understanding. The
157 parties acknowledge that the OM&R of certain Project facilities benefiting parties in the Friant
158 Division will be performed by the San Luis and Delta-Mendota Water Authority pursuant to this
159 Agreement. In connection therewith, the Authority has entered into that certain Memorandum of
160 Understanding Between the Friant Water Users Authority and the San Luis and Delta-Mendota
161 Water Authority Relating to Allocation, Collection, and Payment of Operation, Maintenance, and
162 Replacement Costs for Water Delivered Through Certain Central Valley Project Facilities,
163 effective March 1, 1998, as it may be amended by the parties thereto from time to time. Pursuant
164 to such Memorandum of Understanding, certain OM&R costs described therein will be payable
165 by contractors in the Friant Division of the Project, and collected by the Friant Water Users
166 Authority and paid to the San Luis and Delta-Mendota Water Authority in accordance with the
167 terms of such Memorandum of Understanding, as it may be amended by the parties thereto from
168 time to time. The United States acknowledges and agrees that it is not a party to such
169 Memorandum of Understanding. While this Agreement is in effect, the Authority shall comply
170 with the terms of such Memorandum of Understanding, as it may be amended by the parties
171 thereto from time to time.

172 (g) Direct Charges Replace U.S. Rate Components. After the effective date of
173 this Agreement, the United States shall not charge water rate components for conveyance
174 operation and maintenance, conveyance pumping operation and maintenance, or San Luis Drain

175 operation and maintenance to a Water Delivery Contractor or Party Entitled to Utilize or Receive
176 Other Water, except to the extent (i) financial obligations otherwise properly included in such
177 components have been incurred by the United States prior to the date of this Agreement and have
178 not been included as an expense therein under the ratesetting policies for the Project; or (ii) the
179 United States has paid or provided funding to the Authority for delivering water to a Water
180 Delivery Contractor or Party Entitled to Utilize or Receive Other Water to cover a deficiency in
181 payment.

182 (1) To the extent the Authority's cost recovery methodology includes
183 recovery of power costs for conveyance pumping that are incurred by the United States for the
184 production or transmission of such power, the Authority shall remit such funds to the Contracting
185 Officer within thirty (30) days after receipt of the Contracting Officer's billing therefor.

186 (2) The Authority's recovery of costs for conveyance and conveyance
187 pumping due to DWR, shall be remitted to the Contracting Officer within thirty (30) days after
188 receipt of the Contracting Officer's billing therefor; Provided, that this Article 11(g)(2) shall
189 continue in effect only until execution and implementation of an agreement between the
190 Contracting Officer, the Authority, and DWR providing for the direct payment by the Authority
191 to DWR of such obligations, whereupon, the funds collected for payment to DWR shall be
192 directly remitted by the Authority pursuant to the terms of such agreement.

193 (3) All costs recovered pursuant to the Authority's cost allocation
194 methodology and not required to be remitted to the Contracting Officer pursuant to this
195 Article 11(g) shall be immediately available for funding the costs of the Authority pursuant to
196 this Article 11.

197 (h) Deposits of Amounts Collected. Amounts collected by the Authority
198 pursuant to this Article 11 shall be placed on deposit or otherwise invested in accordance with
199 the Authority's investment policy and in conformance with State law to be expended solely for
200 purposes of this Agreement. All interest accruing on said account shall be property of the
201 Authority, and not of the United States, and shall be applied against OM&R costs.

202 (i) The Contracting Officer agrees that material changes in Project operations
203 affecting the quantity of water to be delivered or in Project finances may affect the ability of the
204 Authority to carry out its obligations under this Agreement. Under such circumstances, the
205 parties will meet and confer as to emergency measures available to reduce the economic hardship
206 to the Authority, the Water Delivery Contractors, and/or Parties Entitled to Utilize or Receive
207 Other Water.

208 2. Article 12 of the Transfer Agreement is deleted in its entirety and replaced with
209 the following:

210 WATER ACCOUNTING

211 (a) The Contracting Officer's water accounting system shall be the source
212 data utilized in maintaining water delivery records and in allocating costs for all Water Delivery
213 Contractors and all other parties utilizing or receiving water from the Project Works. The water
214 accounting system shall fully and accurately document the allocation and deliveries of water
215 through the Project Works and account for financial transactions affecting the Water Delivery
216 Contractors, the Friant Division Contractors required to make payments via the Friant Water
217 Users Authority to the Authority pursuant to the Memorandum of Understanding described in

218 Article 11(f) hereof, and all Parties Entitled to Utilize or Receive Other Water with an obligation
219 to pay therefor.

220 (b) The Contracting Officer shall direct the Water Delivery Contractors and
221 other Parties Entitled to Utilize or Receive Other Water to provide the Authority and the
222 Contracting Officer with water delivery and payment information for all water delivered to said
223 Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water pursuant to
224 this Agreement. All water accounting records created or maintained by the Authority under this
225 Agreement shall be subject to Article 14 hereof and shall be accessible by the Contracting
226 Officer.

227 (c) In order to further their mutual goals and objectives, the Contracting
228 Officer and the Authority shall communicate, coordinate, and cooperate with each other, in order
229 to improve the OM&R of the Project, including the financing thereof. The communication,
230 coordination, and cooperation shall include, but not be limited to, any action which will or may
231 materially affect the quantity or quality of Project Water supply, the allocation of Project Water
232 supply, and Project financial matters, including but not limited to, budget and water accounting
233 issues. The communication, coordination, and cooperation provided for hereunder shall extend
234 to all provisions of this Agreement. Each party shall retain exclusive decision making authority
235 for all actions, opinions, and determinations to be made by the respective party.

236 (d) The Contracting Officer acknowledges that some or all of the Water
237 Delivery Contractors and Parties Entitled to Utilize or Receive Other Water may appoint the
238 Authority as agent for such parties or may otherwise designate, in writing, the Authority to act as
239 an intermediary with the Contracting Officer concerning the water accounting or financial

240 information. Upon notice, in writing, of such relationship, the Contracting Officer agrees to
241 recognize the Authority in such capacity.

242 3. Article 16 of the Transfer Agreement is deleted in its entirety and replaced with
243 the following:

244 NOTIFICATION OF THIRD PARTIES

245 16. (a) The Contracting Officer shall instruct all Water Delivery Contractors and
246 all Parties Entitled to Utilize or Receive Other Water delivered or conveyed through the Project
247 Works that, effective March 1, 1998, the Authority became the Operating Non-Federal Entity
248 with respect to the Project Works. The Contracting Officer shall inform all parties to be so
249 notified of the Authority's rights, authorities, and obligations under this Agreement and any other
250 agreements relevant to the Authority's status as the Operating Non-Federal Entity, and shall
251 cooperate with the Authority in ensuring that all such parties timely and properly make all
252 required payments to the Authority. Without limiting the foregoing, the Contracting Officer
253 shall direct all such parties to simultaneously provide the Authority with copies of all water
254 delivery schedules provided to the Contracting Officer. The Contracting Officer shall also
255 inform all parties to be notified pursuant to this Article 16(a) that, after the effective date of this
256 Agreement, the United States shall not charge the conveyance operation and maintenance cost
257 component, the conveyance pumping operation and maintenance cost component or the drainage
258 operation and maintenance cost component heretofore calculated by the United States pursuant to
259 its ratesetting policies for the Project to Water Delivery Contractors, or Parties Entitled to Utilize
260 or Receive Other Water, except to the extent financial obligations otherwise properly included in
261 such components have been incurred by the United States prior to the effective date of this

262 Agreement and have not been included as an expense therein under the ratesetting policies for the
263 Project.

264 (b) The Secretary shall include in all agreements providing for the delivery or
265 conveyance of water through the Project Works which are entered into, renewed, or amended
266 after May 29, 1998, a provision requiring that, while this Agreement is in effect, the Authority
267 shall be the Operating Non-Federal Entity with respect to the Project Works. All such new,
268 renewed, or amended agreements shall include provisions recognizing the Authority's status as
269 the Operating Non-Federal Entity, and shall require that the non-Federal parties to such
270 agreements timely and properly make all required payments to the Authority. Such new,
271 renewed, or amended agreements shall also include provisions requiring the non-Federal parties
272 to such agreements to simultaneously provide the Authority with copies of all water delivery
273 schedules and water delivery and payment information provided to the Contracting Officer. The
274 Contracting Officer shall also include in all such new, renewed, or amended agreements a
275 provision confirming that, after May 28, 1998, the United States shall not charge the conveyance
276 operation and maintenance cost component, the conveyance pumping operation and maintenance
277 cost component, or the San Luis Drain operation and maintenance cost component heretofore
278 calculated by the United States pursuant to its ratesetting policies for the Project to Water
279 Delivery Contractors, or Parties Entitled to Utilize or Receive Other Water, except to the extent
280 financial obligations otherwise properly included in such components have been incurred by the
281 United States prior to the effective date of this Agreement and have not been included as an
282 expense therein under the ratesetting policies for the Project.

283 4. Subsection (d) of Article 18 of the Transfer Agreement is deleted in its entirety.

284 5. Except as specifically amended by the terms of this Amendment, the Transfer
285 Agreement shall be and remain in full force and effect.

286 IN WITNESS WHEREOF, the parties hereto have executed this Amendment as
287 of the day and year first above written.

288 THE UNITED STATES OF AMERICA

289 APPROVED AS TO LEGAL
290 FORM AND SUFFICIENCY
291 *James A. ...*
OFFICE OF REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

By: *[Signature]*
Regional Director, Mid-Pacific Region
Bureau of Reclamation

292

SAN LUIS AND DELTA-MENDOTA
WATER AUTHORITY

293
294 (SEAL)

By: *[Signature]*
Chairman, Board of Directors

295
296

297 Attest:

298 *[Signature]*
299 Secretary

300 (IASLDMWA Rev. R.O. 09-26-2002.wpd)